

**WEST VIRGINIA  
SECRETARY OF STATE  
JOE MANCHIN, III  
ADMINISTRATIVE LAW DIVISION**

Form #3 □

Do Not Mark In This Box

FILED

2002 JUL 26 A 9:53

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE  
AND  
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: WV MASSAGE THERAPY LICENSURE BOARD TITLE NUMBER: 194

CITE AUTHORITY: § 30-37-6

AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 1

TITLE OF RULE BEING AMENDED: GENERAL PROVISIONS

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: \_\_\_\_\_

TITLE OF RULE BEING PROPOSED: \_\_\_\_\_

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.

*Dewayne Vase*  
Authorized Signature

**SCANNED**

**QUESTIONNAIRE**

*(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)*

DATE: JULY 25, 2002

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: *(Agency Name, Address & Phone No.)* WV MESSAGE THERAPY LICENSURE BOARD

200 DAVIS STREET, SUITE 1

PRINCETON, WV 24740  
304-487-1400

LEGISLATIVE RULE TITLE: GENERAL PROVISIONS

1. Authorizing statute(s) citation § 30-37-6

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:  
JUNE 25, 2002

b. What other notice, including advertising, did you give of the hearing?  
POSTCARDS MAILED TO ALL LICENSEES & POSTED ON THE BOARD'S  
WEB SITE

c. Date of Public Hearing(s) *or* Public Comment Period ended:  
JULY 25, 2002 @ 9:00 AM

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached     X     No comments received

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

JULY 26, 2002

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- f. Name, title, address and **phone/fax/e-mail numbers** of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

JULIE PARKE, ADMINISTRATIVE SECRETARY

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WV MESSAGE THERAPY LICENSURE BOARD

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200 DAVIS STREET, SUITE 1  
PRINCETON, WV 24740  
PHONE - (304) 487-1400 FAX (304) 487-1460  
OFFICE EMAIL: JULIEPARKE@WVDHHR.ORG

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- g. **IF DIFFERENT FROM ITEM 'f'**, please give Name, title, address and phone number(s) of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

DEWAYNE VASS, CHAIRPERSON

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WV MESSAGE THERAPY LICENSURE BOARD

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200 DAVIS STREET, SUITE 1  
PRINCETON, WV 24740  
TELEPHONE (304) 487-1400  
FAX (304) 487-1460 NO EMAIL - USE EMAIL IN "f"

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3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

NA

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b. Date of hearing or comment period:

NA

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c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

NA

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d. Attach findings and determinations and reasons:

Attached NA

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## Public Comments

The Public Comment period ran from June 25, 2002 until July 25, 2002 at 9:00am. There were three (3) comments received. The first was from Anne Martin, LMT in Fairmont WV: her comment and the Board's response listed below. The second was from Sandra Griffin, LMT Vienna, WV: comment and response listed below and the third comment was from Pamela Lynn, LMT Charleston, WV: comment and response listed below.

### First Comment

"If the renewal fee is due on June 30 (4.6.b) of the renewal year, this may conflict with 4.6.k, where the renewal date is due any month of the year. An example: if renewal is due in December, is the renewal fee still due by June 30 of the renewal year? If the renewal month is January, can an applicant hold the money and turn it in by June 30<sup>th</sup>?"

### Board Response

The Board added to the language in 4.6.b and 4.6.k "(see 4.7)" This sums up the question to the comment and clarifies any confusion.

### Second Comment

"I choose to place a photocopy of my license in the office in case of some unforeseen accident (fire). Is it really necessary to have an original at both the primary and secondary places? What is the problem with using photocopies?"

### Board Response

The Board feels that photocopies are unacceptable and does not feel that a \$10.00 duplicate fee is unreasonable.

### Third Comment

#### Part one

1) "With many schools for Massage Therapy in WV now, it seems highly relevant that any and all students should be required to demonstrate at least some level of knowledge acquired by having to take the National Certification Examination. That requirement was in the original law and was removed on the rewriting the following year. Nurses, Lawyers, Accountants and other professions are required to demonstrate at least a baseline competence by taking a standardized exam. Why not Massage Therapists?"

### Board Response

The Board agrees on an exam. They feel that this is something that needs to be changed in the "Code" and will take measures to address this at the appropriate time.

Third Comment  
Part two

2) The "Spa Exemption" that was a consideration for the Greenbrier Hotel spa facility can now be used by any business who offers five (5) or more massage providers. There is an "Oriental Spa" operating in Barboursville that offer "Massage Therapy" until 2am. This opens the door for any type of facility to operate under the banner of "Massage Therapy". This is obviously not what the original law intended to accommodate.

Board Response

The Board discussed the "Spa Exemption" it states in 194-1-2: 2.1; "Resort Spa" means a facility that has been operating on a continuing basis since the first day of January, one thousand nine hundred seventy five, which has a mineral spring located on its premises that persons utilize for bathing or other therapeutic use, and which provides therapeutic massage. The Board agrees that this needs to be removed from the Code and will take measures to address this along with the mandatory written examination.

□  
APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: GENERAL PROVISIONS

Type of Rule:  Legislative     Interpretive     Procedural

Agency: WV MASSAGE THERAPY LICENSURE BOARD

Address: 200 DAVIS STREET, SUITE 1

PRINCETON WV 24740

1. Effect of Proposed rule:

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST					
PERSONAL SERVICES					
CURRENT EXPENSE					
REPAIRS & ALTERATIONS					
EQUIPMENT					
OTHER	\$ 4,000.00 *			\$ 4,000.00	

2. Explanation of Above Estimates:

\* - REVENUE Issuance of approximately 400 duplicate licenses for licensee's secondary workplace will increase revenue by \$ 4,000.00 the first year. Thereafter, since licenses are renewed every two years, the second FY's revenue would be \$ 0.00.

3. Objectives of These Rules:

Remove language from the Rules that is in Code, insert correct language for reimbursement and expenses , require duplicate license for secondary workplace, & allow for new license to expire two years from the month issued.

Rule Title: General Provisions

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4. Explanation of Overall Economic Impact of Proposed Rule:

A. Economic Impact on State Government:

N/A

B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens:

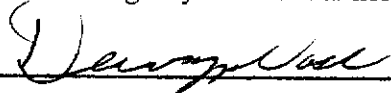
N/A

C. Economic Impact on Citizens/Public at Large.

N/A

Date: June 25, 2002

Signature of Agency Head or Authorized Representative:





## SUMMARY OF THE RULE

### SERIES 1 - GENERAL PROVISIONS

This rule is being submitted to remove language that is already in the W. Va. Code, accurate language for Board member's compensation and expenses, require a Board approved curriculum for the schools as requested by the WV Higher Education Policy commission, require a duplicate license issued by the Board for a secondary workplace instead of a photocopy, changes the renewal date from April 30 to June 30, sets the late fee after July 1, and changes new licenses issued after the effective date of these Rules to expire two years from the end of the month issued.

## FACTS AND CIRCUMSTANCES

THIS SERIES IS BEING SUBMITTED TO REMOVE DUPLICATE LANGUAGE, CORRECT LANGUAGE FOR BOARD MEMBER'S COMPENSATION AND EXPENSES, HAVE A BOARD APPROVED CURRICULUM FOR THE SCHOOLS AS REQUESTED BY THE WV HIGHER EDUCATION POLICY COMMISSION, REQUIRE A DUPLICATE LICENSE FOR A SECONDARY WORKPLACE, AND ALLOW FOR NEW LICENSES TO EXPIRE TWO (2) YEARS FROM THE END OF THE MONTH ISSUED.

FILED

TITLE 194  
LEGISLATIVE RULES  
MESSAGE THERAPY LICENSURE BOARD

2002 JUL 26 A 9:53

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

SERIES 1  
GENERAL PROVISIONS

**§194-1-1. General.**

1.1. Scope. -- These rules establish procedures for conducting the business of the Licensure Board, as well as establishing licensing procedures.

1.2. Authority. -- W. Va. Code 30-37-6.

1.3. Filing Date. --

1.4. Effective Date. --

**§194-1-2. Definitions; Massage Therapy Board Fund; Expenses; Disposition of Funds.**

~~2.1. A Resort spa means a facility that has been operating on a continuing basis since the first day of January, one thousand nine hundred seventy five, which has a mineral spring located on its premises that persons utilize for bathing or other therapeutic use, and which provides therapeutic massage.~~

~~2.2. Employees of a resort spa who conduct therapeutic massages on the resort spa's premises are exempt from the licensing requirements of this rule.~~

2.3. 2.1 All fees shall be made payable to the West Virginia Massage Therapy Licensure Board and deposited by the Board in their account established in the state treasurer's office.

2.4. 2.2 Members of the board shall receive the following compensation for their administration of the Board:

~~2.4.a. 2.2.a -Each member shall receive one hundred dollars (\$100.00) for each meeting attended to conduct the business of the Board. The members of the board shall receive the same compensation and expense reimbursement for their services as is paid to members of the Legislature for interim duties as recommended by the citizens legislative compensation commission and authorized by law for each day or portion thereof that the board member engaged in the discharge of official duties.~~

~~2.4.b. 2.2.b~~ Each member shall receive reimbursements for all expenses incurred in conducting the business of the Board, and meeting the requirements for such travel as set down in the provisions of W. Va. Code 30-1-11. The member may be reimbursed for his or her actual and necessary expenses incurred for each day or portion thereof that the board member is engaged in the discharge of official duties in a manner consistent with the guidelines of the travel management office of the department of administration.

**§194-1-3. Requirements for Licensure.**

3.1. The applicant must complete the application forms provided by the Board and supply the following information:

3.1.a. personal information, and

3.1.b. payment of fees required by Board and one (1) of the following:

3.1.b.1. official letter proving graduation from a program of massage therapy education approved by a state agency in another state, the District of Columbia or a United States territory which approves educational programs, and which meets qualifications for the National Certification Exam administered through the National Certification Board for Therapeutic Massage and Bodywork or the West Virginia state college system board approved massage education both requiring a diploma from an accredited high school or the equivalent and completion of at least five hundred (500) hours of supervised academic training using a current Board approved curriculum, or

3.1.b.2. employed or self-employed as an actively practicing massage therapist prior to the first day of December, one thousand nine hundred ninety-four verified by signed and notarized affidavits from at least five (5) different clients unrelated to the applicant and who received massage therapy from the applicant prior to the first day of December, one thousand nine hundred ninety-four, and other evidence acceptable to the board, which may include a photocopy of tax return for 1994, or

3.1.b.3. photocopy of current certificate of the National Certification Board for Therapeutic Massage and Bodywork (NCTMB) exam.

3.2. Licensed massage therapists applying for renewal must complete the application form provided by the Board with the following information:

3.2.a. personal information,

3.2.b. payment of fees required by the Board, and

3.2.c. documentation of completion of twenty five (25) continuing education

units (CEU'S) within the two (2) year licensing period that adhere to the NCTMB guidelines.

3.3. Massage therapists licensed outside of WV applying for reciprocal WV licensure, must complete the application form(s) provided by the Board with the following information:

3.3.a. personal information,

3.3.b. photocopy of their current or most recent license,

3.3.c. any information regarding any pending or prior investigations or disciplinary actions pertaining to such licensure. This shall include statements from any and all states in which the applicant is currently or formerly licensed,

3.3.d. documentation of applicant's continuing education units (CEU'S) completed in the last two (2) years, and

3.3.e. applicants who are Nationally Certified, shall submit a photocopy of their current National Certification Board for Therapeutic Massage and Bodywork certificate.

3.4. The board may issue a reciprocal license at it's discretion.

3.5. Applicants who apply for a two (2) year provisional license must complete the application form provided by the Board with the following information:

3.5.a. personal information,

3.5.b. verification of current practice by submitting signed and notarized affidavits from five (5) different clients unrelated to the applicant and who received massage therapy from the applicant in 1998,

3.5.c. official letter(s) proving completion of at least two hundred fifty (250) hours of massage therapy training,

3.5.d. signed and notarized statement that applicant is working towards taking the National Certification Exam administered through the National Certification Board for Therapeutic Massage and Bodywork within the next two (2) years, or a photocopy of their application to take an upcoming National Certification Exam, and

3.5.e. payment of fees required by the Board

3.6. Massage therapists applying for renewal or reciprocal license must meet the

current standards for continuing education hours required to conform to the National Certification Board for Therapeutic Massage and Bodywork guidelines.

3.7. The board may issue a provisional license at it's discretion.

3.8. Applicants who apply for a license in West Virginia and who are not licensed in any other state, the District of Columbia or a United States territory or any other country or province must meet the requirements as set forth in subsection one.

3.9. All licensed massage therapist and those applicants who apply for a license in West Virginia are required to keep or have a record of continuing education units (CEU'S) including the title of the class, (workshop, etc.), the date, place, number of hours of instruction, instructor's name, sponsor, and the person to call to verify attendance (sponsoring group or instructor). A certain number of licensed massage therapists may be audited every two (2) years, and applicants may be asked to provide the information listed above.

3.10. All applicants are subject to an audit to verify credentials or other information requested by the Board, at its discretion.

3.11. Each licensed massage therapist shall publicly display their current valid license at their primary work site (or copy thereof). A duplicate license, issued by the Board, shall be displayed at their secondary place of employment.

#### **§194-1-4. Duties of Board; Authorization to Propose Rules and Fees.**

4.1. The Board shall grant a license to any applicant who meets all the requirements as set forth in these rules.

4.1.a. The Board may suspend, revoke or impose probationary conditions on a licensee who fails to comply with the requirements of this rule.

4.1.b. A license shall include at least the following information: full name, date of issuance, seal of West Virginia, license number, signature of Chairperson or Secretary of Board.

4.2. Massage therapists applying for renewal, reciprocal, or provisional license must meet the current standards for continuing education hours required under the National Certification Board for Therapeutic Massage and Bodywork (NCBTMB) guidelines. Failure to comply with the current standards for continuing education as required by NCBTMB, shall be grounds for revocation or suspension under the provisions of this rule.

4.3 The holder of a massage therapy license shall comply with the following

requirements:

4.3.a. Maintain documentation of compliance with all applicable state or local government regulations.

4.3.b. Massage therapy shall be conducted only in rooms which are adequately lighted and ventilated, and which are kept clean. Restroom facilities with toilet, sink with hot and cold running water, soap, and clean towels and adequate toilet tissue must be available.

4.3.c. Reasonable effort for sanitation shall be maintained for temporary locations such as athletic events or public service fund raisers in temporary venues.

4.3.d. All equipment and supplies used to perform massage services must be maintained in a safe and sanitary condition. Lotions, creams, and oils must be kept free of possible bacterial contamination.

4.3.e. All licensees shall wash their hands in hot, soapy water or other antibacterial substance before and after each massage therapy treatment.

4.3.f. All licensees shall launder, before reuse, all materials furnished for the personal use of the massage therapy client, such as towels, linens and any draping materials.

4.3.g. Before proceeding with the massage of a client, each massage therapist shall have explained expected draping techniques and provide the client a clean drape or drapes for the purpose of covering the body in accordance with generally-accepted standards of practice.

4.4. All licensed massage therapists must acknowledge and sign an agreement to uphold the Code of Ethics adopted by the National Certification Board for Therapeutic Massage and Bodywork.

4.5. Each applicant for licensure is responsible for paying the appropriate fees as obtained in this rule.

4.6. The fees authorized to be established by the board and necessary to the operation of the board are as follows:

4.6.a. Twenty-five dollars (\$25.00) -- Application fee -- a non-refundable fee to be paid by all applicants for a massage therapy license including those seeking reciprocal or provisional license.

4.6.b. One hundred dollars (\$100.00) -- Two (2) year licensure renewal fee -- a fee to be paid prior to the issuance of the license. This fee must be received by ~~April 30~~ June 30 of the renewal year (see 4.7). This fee is non-refundable after issuance of license.

4.6.c. Two hundred dollars (\$200.00) -- Two (2) year license fee -- a fee to be paid at the time of application for initial OR reciprocal license. This fee does not include the twenty-five dollars (\$25.00) application fee. This fee is non-refundable after issuance of license.

4.6.d. Twenty-five dollars (\$25.00) -- Late fee -- a non-refundable fee to be paid when a licensee fails to submit application and fees on or ~~before April 30~~ after July 1. This is in addition to the other required fees.

4.6.e. Ten dollars (\$10.00) -- Duplicate or replacement license fee -- a non-refundable fee to be paid when an individual requests a replacement for a lost or destroyed license, renewal or duplicate license.

4.6.f. Two Hundred Twenty-five dollars (\$225.00) -- Two (2) year-provisional license fee -- a fee to be paid at the time of application for a provisional license. This fee is non-refundable after issuance of license.

4.6.g. Ten dollars (\$10.00) -- Certified statement fee -- a fee to be paid at the time of request that a licensee is licensed in West Virginia.

4.6.h. Ten dollars (\$10.00) -- Failure to report change of address fee in writing fee -- a fee that is to be paid by the applicant when they have failed to notify the Board in writing within thirty (30) days of changing their address.

4.6.i. Ten dollars (\$10.00) -- Failure to report name change in writing fee -- a fee that is to be paid by the applicant when they have failed to notify the Board in writing within thirty (30) days of changing their name.

4.6.j. ~~Twenty-five dollars (\$25.00)~~ Fifty dollars (\$50.00) -- Roster fee -- a fee that is to be paid by at the time of the request for a copy of the roster of current licensed massage therapist.

4.6.k. ~~One hundred dollars (\$100.00) -- Prorated license fee -- a fee that is to be paid by the applicant when license is issued for a year or less for initial or reciprocal license.~~ Two hundred dollars (\$ 200.00) -- License fee for a new license issued after the effective date of these rules. These license will be renewable two (2) years from the end of the month issued (see 4.7). This fee is non-refundable after issuance of license.



4.6.l. Photocopy per page fee -- a twenty-five cent (\$.025) per page photocopying fee shall be paid at the time information is requested.

4.7 All licenses issued prior to the effective date of these rules will expire on July 1st every two (2) years. New licenses issued under 4.6.k will expire two (2) years from the end of the month issued.